Geetayanagi a/p Davan dan satu lagi lwn Ketua Pengarah Jabatan Pendaftaran Negara, Malaysia dan lain-lain

MAHKAMAH TINGGI (KOTA BHARU) — SAMAN PEMULA NO DA-24NCvC-62–03 TAHUN 2023
MOHAMAD ABAZAFREE H
20 FEBRUARI 2024

Undang-Undang Persekutuan — Kewarganegaraan — Kewarganegaraan melalui kuat kuasa undang-undang — Permohonan semakan kehakiman terhadap keputusan responden-responden yang menolak permohonan kewarganegaraan pemohon-pemohon — Sama ada kedua-dua pemohon layak diberikan kewarganegaraan melalui kuat kuasa undang-undang — Perlembagaan Persekutuan perkara 14(1)

Kes ini melibatkan permohonan semakan kehakiman oleh pemohon-pemohon di bawah perkara 14(1) Perlembagaan Persekutuan ('PP') serta s 44 Akta Relif Spesifik 1950 bagi mendapatkan kewarganegaraan melalui kuat kuasa undang-undang. Bapa kepada kedua-dua pemohon yang merupakan seorang warganegara Malaysia telah berkahwin dengan ibu kedua-dua pemohon yang merupakan warga Singapura pada 23 November 1998 secara adat istiadat agama Hindu. Namun perkahwinan mereka tidak didaftarkan sepertimana yang diperuntukkan di bawah Akta Memperbaharui Undang-Undang (Perkahwinan dan Penceraian) 1976. Hasil perkahwinan tersebut, mereka telah dikurniai dengan dua cahaya mata iaitu kedua-dua pemohon. Walau bagaimanapun, ibu kepada kedua-dua pemohon telah meninggalkan keluarganya pada tahun 2007. Kedua-dua pemohon dilahirkan di Hospital Besar Kota Bharu pada 19 Oktober 1999 dan 4 Jun 2001. Dalam kedua-dua sijil kelahiran telah dicatitkan kedua-dua pemohon adalah 'bukan warganegara'. Pada 25 April 2021 bapa kedua-dua pemohon telah membuat permohonan daripada responden pertama untuk mendapatkan kad pengenalan. Berlanjutan itu, kedua-dua mereka telah dipanggil untuk ditemuduga dan dimaklumkan oleh Jabatan Pendaftaran Negara cawangan Kota Bharu bahawa permohonan mereka ditolak. Pada 6 Disember 2022 pihak Kementerian Dalam Negeri telah mengemukakan surat pemakluman kepada bapa pemohon-pemohon bahawa permohonan kewarganegaraan kedua-dua pemohon di bawah perkara 15A PP adalah ditolak. Oleh itu, permohonan ini.

Diputuskan, menolak permohonan:

(1) Kedua-dua pemohon dilahirkan pada ketika tidak wujud sebarang ikatan perkahwinan yang sah. Sehingga kini, tidak wujud sebarang perkahwinan yang didaftarkan di atas nama ibu dan bapa kedua-dua

pemohon. Oleh itu, penentuan taraf kewarganegaraan kedua-dua pemohon hendaklah bergantung kepada warganegara ibunya. Kedua-dua pemohon telah gagal untuk membuktikan bahawa kedua mereka telah mematuhi kehendak sepertimana yang ditetapkan di bawah perkara 14(1)(b) PP yang dibaca bersama s 1(a) Bahagian II Jadual Kedua PP. Kedua-dua pemohon secara amnya layak untuk mendapat kewarganegaraan negara Singapura. Tiada apa-apa usaha yang ditunjukkan oleh kedua-dua mereka untuk membuktikan apa-apa usaha yang telah diambil untuk memperolehi kewarganegaraan Singapura. Adalah menjadi kewajipan kepada kedua-dua pemohon untuk menunjukkan kepada mahkamah mengapa mereka tidak berhak mendapat kerakyatan Singapura. Perkara ini telah gagal dilakukan oleh kedua-dua pemohon. Oleh yang demikian, kedua-dua pemohon tidak boleh dikatakan sebagai orang tanpa kerakyatan bagi tujuan kewarganegaraan melalui kuat kuasa undang-undang di bawah s 1(e) Bahagian II Jadual Kedua PP (lihat perenggan 20, 22, 33, 35 & 37–38).

[English summary

This case involved a judicial review application by the applicants under art 14(1) of the Federal Constitution ('the FC') as well as s 44 of the Specific Relief Act 1950 to obtain citizenship by operation of law. The father of both applicants who was a Malaysian citizen married with the mother of both applicants who was a Singaporean citizen on 23 November 1998 according to Hindu customs. However, their marriage was not registered pursuant under the Law Reform (Marriage and Divorce) Act 1976. As a result of the marriage, they were blessed with two children, namely the two applicants. However, the mother of both applicants left her family in 2007. Both applicants were born at Kota Bharu General Hospital on 19 October 1999 and 4 June 2001. In both of the birth certificates it was noted that both applicants were 'non-citizen'. On 25 April 2021 the father of both applicants made an application to the first respondent to obtain identity cards. Following that, both of them were called for an interview and informed by the National Registration Department Kota Bharu branch that their application was rejected. On 6 December 2022, the Ministry of Home Affairs submitted a notification letter to the father of the applicants that the citizenship application of both applicants under art 15A of the FC was dismissed. Hence, this application.

Held, dismissing the application:

(1) Both applicants were born at a time when there was no legal matrimony. Until now, there was no marriage registered in the name of the mother and father of both applicants. Therefore, the determination of the citizenship status of both applicants shall depend on the nationality of the mother. Both applicants had failed to prove that both of them had complied with the requirements as stipulated under art 14(1)(b) of the

FC read together with s 1(a) Part II of the Second Schedule of the FC. Both applicants were generally eligible for Singaporean citizenship. There was no effort shown by either of them to prove any effort that had been taken to acquire Singapore citizenship. It was the duty of both applicants to show the court why they were not entitled to Singapore citizenship. This point had failed to be done by both applicants. As such, both applicants could not be said to be stateless persons for the purposes of citizenship by operation of law under s 1(e) Part II of the Second Schedule of the FC (see paras 20, 22, 33, 35 & 37–38).]

Kes-kes yang dirujuk

Azimah bt Hamzah v Ketua Pengarah Jabatan Pendaftaran Negara & Ors [2023] 3 MLJ 227; [2023] 3 CLJ 475, MR (diikut)

CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia [2022] 1 MLJ 71, MP (dibeza)

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 4 MLJ 236, MP (diikut)

Chan Tai Ern Bermillo (a minor bringing this action through his biological father and next friend, the second plaintiff) & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2020] 3 MLJ 634, MR (dirujuk)

Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, Child) v Ketua Pendaftar Kelahiran dan Kematian, Malaysia [2012] 9 MLJ 573; [2012] 4 CLJ 613; [2012] 4 AMR 35, MT (diikut)

Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors [2018] 1 MLJ 307; [2018] 4 CLJ 758, MR (dibeza)

Mahisha Sulaiha Abdul Majeed v Ketua Pengarah Pendaftaran & Ors and another appeal [2022] 5 MLJ 194; [2022] 8 CLJ 697, MR (dirujuk)

Nedunchelian V Uthiradam v Nurshafiqah Mah Singai Annal & Ors [2003] MLJU 842; [2005] 2 CLJ 306, MT (dirujuk)

Peguam Negara Malaysia & Anor v Go Fu Seng and other appeals [2023] 3 MLJ 277, MR (dirujuk)

Pendaftar Besar Kelahiran dan Kematian, Malaysia v Pang Wee See & Anor (applying on their behalf and as litigation representatives for Pang Cheng Chuen, a child) [2017] 3 MLJ 308, MR (dirujuk)

Shamala Sathiyaseelan v Dr Jeyaganesh C Mogarajah & Anor [2004] 2 MLJ 648; [2004] 2 CLJ 416, MT (dirujuk)

Undang-undang yang dirujuk

Akta Memperbaharui Undang-Undang (Perkahwinan dan Penceraian) 1976

Akta Pendaftaran Negara 1959 s 4

Akta Relif Spesifik s 44

Constitution of the Republic of Singapore [SG] perkara 122(1)(a), Jadual Ketiga, s 15(1)

Peraturan-Peraturan Pendaftaran Negara 1990 peraturan 11, 14
Perlembagaan Persekutuan perkara 14(1), 14(1)(b), 15A, Jadual Kedua, Bahagian II, ss 1(a), (b), (c), (d), (e), Bahagian III, s 17

Amanda Sonia Mathew (Raj & Sach) bagi pihak pemohon.
Ahmad Armi Najamuddin bin Azmi (Pejabat Penasihat Undang-Undang Negeri Kelantan) bagi pihak responden.

Mohamad Abazafree H:

PENDAHULUAN

[1] Kes ini melibatkan permohonan oleh pemohon-pemohon di bawah perkara 14(1) Perlembagaan Persekutuan ('PP') serta s 44 Akta Relif Spesifik (Akta 137) bagi mendapatkan kewarganegaraan melalui kuat kuasa undang-undang.

[2] Relif-relif yang dipohon oleh kedua-dua pemohon adalah seperti berikut:

(a) suatu deklarasi bahawa pemohon-pemohon adalah warganegara Malaysia melalui operasi undang-undang menurut perkara 14(1)(b) dan/atau s 1(a) Jadual Kedua, Bahagian Dua Perlembagaan Persekutuan dan/atau responden kedua dan ketiga mempunyai kuasa dan merupakan badan berkuasa yang mentadbir dan berautoriti terhadap responden pertama untuk membenarkan dan memberi kewarganegaraan kepada pemohon-pemohon;

(b) suatu deklarasi bahawa pemohon-pemohon adalah seorang warganegara Malaysia menurut perkara 14(1)(b) dan/atau s 1(a) Jadual Kedua, Bahagian Dua Perlembagaan Persekutuan dan pemohon-pemohon berhak secara 'as of right' untuk memperolehi kewarganegaraan;

(c) suatu perintah mengarahkan responden-responden untuk mengeluarkan sijil kelahiran baru yang mencatatkan bahawa pemohon-pemohon merupakan warganegara Malaysia dan sijil kelahiran baru tersebut diisukan kepada pemohon-pemohon dalam tempoh 21 hari dari tarikh mahkamah memerintahkan sedemikian;

(d) suatu perintah mengarahkan responden-responden untuk mengeluarkan kad pengenalan dengan catatan bahawa pemohon-pemohon adalah seorang warganegara Malaysia dalam tempoh 21 hari dari tarikh mahkamah memerintahkan sedemikian;

(e) suatu perintah bahawa responden-responden mendaftarkan dan mengemaskini nama pemohon-pemohon ke dalam pendaftaran sepertimana di bawah s 4 Akta Pendaftaran Negara 1959 dan

peraturan-peraturan 11 dan 14 Peraturan-Peraturan Pendaftaran Negara 1990; dan

(f) suatu award ganti rugi termasuk ganti rugi am dan/atau ganti rugi untuk ditaksirkan bagi kemungkiran hak berpelembagaan.

FAKTA KES

[3] Berdasarkan kepada keterangan-keterangan melalui afidavit serta keterangan-keterangan dokumen yang dikemukakan, mahkamah merumuskan fakta kes yang relevan adalah seperti berikut:

(a) bapa kepada kedua-dua pemohon iaitu Davan a/l Sucomaran yang merupakan seorang warganegara Malaysia telah berkahwin dengan ibu kedua-dua pemohon iaitu Koomutha a/p P Sabanatan yang merupakan warga Singapura pada 23 November 1998 secara adat istiadat agama Hindu. Namun perkahwinan mereka tidak didaftarkan sepertimana yang diperuntukkan di bawah Akta Memperbaharui Undang-Undang (Perkahwinan dan Penceraian) 1976 (Akta 164);

(b) hasil perkahwinan tersebut, mereka telah dikurniai dengan dua cahaya mata iaitu kedua-dua pemohon di dalam kes ini. Selepas sembilan tahun, ibu kepada kedua-dua pemohon telah meninggalkan keluarganya pada tahun 2007 dan tidak dapat dihubungi sehingga sekarang;

(c) pemohon pertama dilahirkan di Hospital Besar Kota Bharu pada 19 Oktober 1999 dan diisukan sijil kelahiran bernombor AN53715 sepertimana di eksh 'GD1' di K2;

(d) manakala pemohon kedua dilahirkan di Hospital Besar Kota Bharu pada 4 Jun 2001 dan diisukan sijil kelahiran bernombor AV56766 sepertimana di ekshibit 'GD2' di K2;

(e) di dalam kedua-dua ekshibit 'GD1' dan 'GD2' telah dicatitkan kedua-dua pemohon adalah 'Bukan Warganegara' dan Davan a/l Sucomaran dicatatkan sebagai bapa manakala Koomuthaa a/p P Sabanatan dicatatkan sebagai ibu;

(f) pada 25 April 2021 bapa kedua-dua pemohon telah membuat permohonan dari responden pertama untuk mendapatkan kad pengenalan. Berlanjutan itu, kedua-dua mereka telah dipanggil untuk ditemuduga dan dimaklumkan oleh Jabatan Pendaftaran Negara cawangan Kota Bharu bahawa permohonan mereka ditolak; dan

(g) pada 6 Disember 2022 pihak Kementerian Dalam Negeri ('KDN') telah mengemukakan surat pemakluman kepada kedua-dua bapa pemohon bahawa permohonan kewarganegaraan kedua-dua pemohon di bawah perkara 15A PP adalah ditolak.

ISU UNTUK DIPERTIMBANGKAN

[4] Berdasarkan kepada kertas-kertas kausa yang difailkan serta hujahan kedua-dua pihak, isu yang perlu diputuskan oleh mahkamah ini adalah sama ada kedua-dua pemohon layak diberikan kewarganegaraan melalui kuat kuasa undang-undang di bawah perkara 14(1) PP yang dibaca bersama-sama s 1(a) atau (e), Bahagian II, Jadual Kedua Perlembagaan Persekutuan.

[5] Peguam kedua-dua pemohon berpendirian bahawa kedua-dua pemohon adalah merupakan orang yang dilahirkan selepas Hari Malaysia ('Malaysia Day') dan memandangkan salah seorang ibu bapanya ('parents') iaitu bapanya adalah seorang warganegara, maka kedua mereka layak diberi kerakyatan melalui kuasa undang-undang.

[6] Peguam telah merujuk kepada keputusan Mahkamah Rayuan di dalam kes *Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors* [2018] 1 MLJ 307; [2018] 4 CLJ 758 di mana diputuskan:

> [51] In the first place, art 14(1)(b) read with s 1(a) of Part I of the Second Schedule *does not make reference to the nature or state of the capacity of 'parents'; the term 'parents' is not qualified in any manner or form in art 14*. Certainly, it is not qualified by the word 'lawful', 'natural', 'biological', 'adopted' or even 'surrogate', or any other description or adjective. *It simply refers to the capacity of 'parents'*. Harkening back to the principles to be adopted when construing and interpreting the Federal Constitution as expressed in *Dato' Menteri Othman bin Baginda*, one is reminded that judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. As a 'living piece of legislation', the provisions in *the Federal Constitution must be construed broadly and not in a pedantic way*. The court must recognise that the construction of the provisions of the Federal Constitution must be '*with less rigidity and more generosity than other statutes' because the Federal Constitution is sui generis, 'calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation'. Since art 14(1)(b) has not qualified the term 'parents', it is inappropriate to do so*.
>
> [52] Hence, on a prima facie level, the term 'parents' must bear its ordinary common sense meaning. The *Merriam-Webster Dictionary* defines the term 'parent' as one that begets or brings forth offspring; or a person who brings up and cares for another and that includes a foster parents. *The Collins Dictionary defines 'parent' as a father or mother or a person acting as a father or mother*. Even *Black's Law Dictionary*, (10th Ed), Thomson Reuters defines 'parent' not just as the 'lawful father or mother of someone' but goes on to state that:
>
> > ... the term commonly includes (1) either the natural father or the natural mother of a child, (2) either the adoptive father or the adoptive mother of a child, (3) a child's putative blood parent who has expressly acknowledged paternity,

A and (4) an individual or agency whose status as guardian has been established by judicial decree ...

B **[7]** Peguam kedua-dua pemohon turut menegaskan bahawa mereka telah tinggal di Malaysia sejak dilahirkan dan sekiranya taraf kewarganegaraan tidak diberikan maka ia akan menyebabkan terjejasnya kebajikan dan kepentingan mereka.

C **[8]** Turut dihujahkan bahawa s 17, Bahagian III, Jadual Kedua PP adalah tidak terpakai ke atas s 1(e), Bahagian II, Jadual Kedua PP.

D **[9]** Peguam persekutuan sebaliknya menghujahkan bahawa pihak responden tidak mempertikaikan berkenaan faktor tempat dan masa kelahiran kedua-dua pemohon. Namun dihujahkan bahawa kedua-dua pemohon gagal membuktikan ikatan perkahwinan yang sah di antara ibu dan bapanya yang melayakkan mereka untuk diberi taraf kewarganegaraan.

E **[10]** Di dalam keadaan di mana perkahwinan ibu dan bapa kedua-dua pemohon tidak dapat ditentukan, maka kedua-dua mereka tidak boleh dikategorikan sebagai anak yang sah taraf. Oleh itu berdasarkan s 17 Bahagian III Jadual Kedua PP maka sebutan mengenai bapa atau ibu bapanya atau mengenai salah seorang ibu bapanya merujuk kepada ibunya. Di dalam kes ini, ibu mereka adalah warganegara Singapura dan berdasarkan perkara 122(1)(a) Constitition of Singapore dan s 15(1), Jadual Ketiga Constitution of the Republic of Singapore, mereka sepatutnya menjadi warganegara Singapura.

F

G PRINSIP UNDANG-UNDANG BERKAITAN KEWARGANEGARAAN MELALUI KUAT KUASA UNDANG-UNDANG

[11] Perkara 14(1) PP menyatakan seperti berikut:

14 Citizenship by operation of law

H (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:

(a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part I of the Second Schedule; and

I (b) *every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule*.

[12] Manakala s 1, Bahagian II, Jadual Kedua PP pula menyatakan:

1 Citizenship By Operation Of Law Of Persons Born On Or After Malaysia Day

Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:

(a) every person born within the Federation of whose parents one at least is at the time of the birth either a citizen or permanently resident in the Federation; and

(b) every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State; and

(c) every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government; and

(d) every person born in Singapore of whose parents one at least is at the time of the birth a citizen and who is not born a citizen otherwise than by virtue of this paragraph; and

(e) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.

[13] Bagi maksud kes ini, isu yang berbangkit adalah berkaitan s 1(b) dan (e) dan sehubungan itu, keperluan undang-undang yang perlu dipenuhi oleh kedua-dua pemohon adalah:

(a) individu tersebut dilahirkan dalam Persekutuan; dan

(b) salah seorang ibu bapa pada waktu kelahiran sama ada warganegara atau bermastautin di dalam Persekutuan; dan

(c) tiap-tiap orang yang lahir di dalam Persekutuan yang tidak dilahirkan sebagai warganegara mana-mana negara selain menurut perenggan ini.

[14] Di dalam menentukan taraf warganegara seseorang individu secara kuat kuasa undang-undang kedua-dua konsep *jus soli* dan *jus sanguinis* hendaklah terpakai dan dibuktikan oleh pemohon-pemohon. Dalam erti kata lain, kewarganegaraan pemohon-pemohon tidak ditentukan berdasarkan faktor kelahiran pemohon-pemohon di negara ini semata-mata (*jus soli*), sebaliknya turut mengambil kira status perkahwinan dan taraf kewarganegaraan ibu bapa kandung (*jus sanguinis*) ketika kelahiran pemohon-pemohon. Prinsip ini telah diputuskan oleh Mahkamah Rayuan di dalam kes *Pendaftar Besar Kelahiran dan Kematian, Malaysia v Pang Wee See & Anor (applying on their behalf and as litigation representatives for Pang Cheng Chuen, a child)* [2017] 3 MLJ 308 yang memutuskan seperti berikut:

[29] In determining citizenship of a person, two concepts are commonly applied, namely the concept of *jus soli* and the concept of *jus sanguinis*. *Jus soli* which means

A 'right of the soil', and commonly referred to as birth right citizenship, is the right of anyone born in the territory of a state to nationality or citizenship. The determining factor being the place or territory where a person was born. In the case of *jus sanguinis*, which in Latin means 'right of blood', is a principle of nationality law by which citizenship is not determined by place of birth but by having one or both
B parents who are citizens of the state. Viewed from the context of these two concepts, we are of the considered opinion that art 14(1)(b) read with s 1(a), Part II, Second Schedule of the Federal Constitution is a provision which is anchored on the elements of both the concepts of *jus sanguinis* and of *jus soli*, whereby citizenship of a person is traceable to the place of birth namely, Malaysia, as well as Malaysian
C citizenship of one of the person's parents (the right of blood) at the time of the person's birth, in order to be a Malaysian citizen by operation of law, under art 14(1)(b) read with s 1(a), Part II, Second Schedule of the Federal Constitution.

ANALISIS DAN DAPATAN MAHKAMAH

D

[15] Bagi kes ini perkara pertama yang perlu ditentukan oleh mahkamah ini adalah berkaitan asal usul bapa dan ibu kedua-dua pemohon dengan membuktikan kewujudan satu ikatan perkahwinan yang sah di antara kedua mereka. Ia dengan erti kata lain, sama ada kedua-dua ibu dan bapa kedua-dua
E pemohon telah mendaftarkan perkahwinan mereka. Penentuan ini perlu mengambil kira tarikh kedua-dua pemohon dilahirkan.

[16] Ini selaras dengan apa yang dinyatakan oleh Mahkamah Persekutuan di dalam kes *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors*
F [2021] 4 MLJ 236 seperti berikut:

> [172] The Malaysian cases discussed above are also clear and unequivocal that because citizenship by operation of law is determined at birth, other laws which retrospectively qualify a person such as Legitimacy Act or Adoption Act cannot be used to construe the qualification of that person.

G

[17] Terma ibu bapa telah dibincangkan oleh Hakim Syed Ahmad Helmy di dalam kes *Neduncheliyan V Uthiradam v Nurshafiqah Mah Singai Annal & Ors* [2003] MLJU 842; [2005] 2 CLJ 306 seperti berikut:

H

> Though under art 160(1) the singular includes the plural nevertheless the placement of the word parent in the singular clearly gives rise as to whether it was intentionally inserted as such to be read in the singular. Interestingly enough art 160B expressly states that the authoritative text of the Constitution is the Bahasa text and hence when the equivalent term of parent which is 'ibu bapa' in the Bahasa text is construed it invariably is interpreted in the singular sense as the plural sense
I would be kedua ibu bapa in the Bahasa text. That being the case the intention of the framers of the Constitution in placing the word parent in the singular clearly intended it to be such.

[18] Isu yang sama telah turut dibincangkan di dalam kes *Shamala*

Sathiyaseelan v Dr Jeyaganesh C Mogarajah & Anor [2004] 2 MLJ 648; [2004] 2 CLJ 416 yang telah menjelaskan definisi 'parent' berdasarkan kepada *Black's Law Dictionary Abridged* (6th Ed) (Centennial Ed 1891–1991) yang menafsirkan perkataan 'parent' sebagai 'the lawful father or mother of a person' and the word 'guardian' as 'a person lawfully invested with the power and responsibility for the care and management of the person or the estate or both of a child during its minority'.

[19] Nas-nas ini menjelaskan bahawa ibubapa yang sah adalah merujuk kepada ibu dan bapa kandung di dalam sesuatu perkahwinan iaitu perkahwinan di antara ibu dan bapa kedua-dua pemohon. Ia juga perlu dibuktikan taraf perkahwinan tersebut semasa kedua-dua pemohon dilahirkan.

[20] Berdasarkan keterangan yang dikemukakan, mahkamah berpuashati bahawa kedua-dua pemohon dilahirkan pada ketika tidak wujud sebarang ikatan perkahwinan yang sah. Sehingga kini, mahkamah turut mendapati bahawa tidak wujud sebarang perkahwinan yang didaftarkan di atas nama ibu dan bapa kedua-dua pemohon.

[21] Oleh yang demikian, mahkamah berpandangan s 17, Bahagian III, Jadual Kedua PP adalah terpakai. Seksyen tersebut menyatakan:

> 17 For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly section 19 of this Schedule shall not apply to such a person.

[22] Oleh itu, penentuan taraf kewarganegaraan kedua-dua pemohon hendaklah bergantung kepada warganegara ibunya. Ini berpandukan apa yang dinyatakan oleh hakim Rohana Yusof HMT (pada ketika itu) di dalam kes *Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, Child) v Ketua Pendaftar Kelahiran dan Kematian, Malaysia* [2012] 9 MLJ 573; [2012] 4 CLJ 613; [2012] 4 AMR 35 seperti berikut:

> (a) before a person can qualify as a citizen by operation of law, he must be born to a lawful parent under art 14 of the Constitution. The word 'parent' in art 14 must refer to lawful parent. The child here could not qualify as a citizen by operation of law because he was not born to a lawful parent (see paras 10–11);
>
> (b) the emphasis of the requirement under art 14 has to be placed on his birth status because art 14 clearly refers to the fulfilment of the requisite conditions at the time of his birth. It could not be disputed that his birth status did not qualify him to be a citizen by operation of law (see para 11); and

(c) pursuant to s 17 of Part III of the Second Schedule of the Federal Constitution, in a case of an illegitimate child, as in this case, the word parent refers to his mother and not the biological father, the applicant (see para 18).

[23] Hakim Rohana Yusuf turut menyatakan:

> [18] The above provisions are clear that, *to be a citizen by operation of law under art 14, a person must be born within Federation and at the time of his birth, his either parent is a citizen or a permanent resident. If we examine art 14 read together with Second Schedule Part II s 1(a) carefully, it is clear that to qualify as a citizen by operation of law a person must be born within the Federation to parents, one at least is at the time of his birth either a citizen or permanently resident in the Federation*. There is no doubt that at the time of his birth Foo Shi Wen was not born to a lawful parent. Since at birth he was not born to a lawful parent he did not qualify to be a citizen by operation of law. The emphasis of the requirement under art 14 has to be placed on his birth status because art 14 clearly refer to the fulfilment of the requisite conditions at the time of his birth. It cannot be disputed that his birth status does not qualify him to be a citizen by operation of law. *Furthermore s 17 of the Part III of the Second Schedule provides that for the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother … ' Thus, it is clear that in a case of an illegitimate child, as in this case, the word parent refers to his mother and not the biological father, the applicant*.

[24] Perkara yang sama turut turut dibincang serta diputuskan oleh Mahkamah Rayuan di dalam kes *Chan Tai Ern Bermillo (a minor bringing this action through his biological father and next friend, the second plaintiff) & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2020] 3 MLJ 634 seperti berikut:

> [6] Reading the above cited provisions, we find there will not be any problem if a child is born legitimate to a father who is a Malaysian citizen even if he is born outside the Federation. But in the instant appeal, the child was born out of wedlock. He was illegitimate at the time of his birth. So there comes the problems. Section 17 of Part III of the Second Schedule specifically stipulates that 'father' in relation to a person who is illegitimate refer to his mother.

[25] Manakala di dalam kes *CTEB*, Mahkamah Persekutuan melalui penghakiman hakim Rohana Yusuf PMR telah menyatakan:

> [157] From the express distinction for parents or father of an illegitimate child in s 17, it is obvious that the word parents' in the context of Part III of the FC must be construed to refer to lawful parents in a recognised marriage in the Federation. This country never legally recognised unwedded parents. I say so because proper distinctions have always been made in our legislation in order to differentiate between the status of parents' in a recognised marriage or otherwise. Even under s 13 of the Births and Deaths Registration Act 1957, the legislation makes a clear

distinction between a father or mother of an illegitimate child. This connotes that 'parents' refers always to legally wedded parents, not biological father and mother. A

[26] Di dalam kes yang sama, Mahkamah Persekutuan turut menjelaskan bahawa perkahwinan tersebut hendaklah juga dibuktikan berlaku 'at the time of the birth' yang diperjelaskan seperti berikut: B

> [164] I wish to add that in *Foo Toon Aik*, I had the occasion to address this subject in the High Court. *I held that the child's status at birth should be the determining point to qualify for the acquisition of citizenship by operation of law*. In the present appeal, similar issues are brought before this court for determination. Notwithstanding my earlier decision, I have given my utmost considerations to the arguments put forth by the parties. Having heard those arguments, I am now even more convinced and fortified in my view that acquisition of citizenship by operation of law requires the fulfillment of the requisite conditions at the time of birth. C

[27] Berkaitan rujukan peguam kedua-dua pemohon ke atas kes *Madhuvita Janjara*, mahkamah mendapati bahawa keputusan Mahkamah Rayuan tersebut telah diakaskan oleh Mahkamah Persekutuan di dalam kes *CTEB* dan ini dinyatakan dengan jelas oleh Mahkamah Rayuan di dalam kes *Peguam Negara Malaysia & Anor v Go Fu Seng and other appeals* [2023] 3 MLJ 277 seperti berikut: D E

> The decisions of the High Court were anchored on the Court of Appeal's decision in *Madhuvita* but the latter was overruled by the majority decision of the Federal Court in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236 ('CTEB'). In *CTEB*, the Federal Court clearly and unequivocally rejected the proposition that was established by the Court of Appeal in *Madhuvita* regarding the role of the order made under the Legitimacy Act 1961 or the subsequent legitimation of marriage of the parents for the purposes or determining the question whether a child had the requisite qualifications to attain citizenship by operation of law. The Federal Courts decision in *CTEB* was delivered after the High Courts had rendered their decision in each of the applications which were now on appeal before this court. It was common ground between all the counsels who appeared in the present appeals that in light of the Federal Court's decision in *CTEB*, *Madhuvita* was no longer good law. The court in the present appeals was therefore bound by the doctrine of stare decisis to follow the Federal Court's decision in *CTEB*. The court held that acquisition of citizenship by operation of law required the fulfilment of the requisite conditions at the time of birth and not thereafter. Therefore, it was the illegitimate status at the time of birth which was relevant and the subsequent legitimation of marriage of the parents did not alter the earlier illegitimate status of the child and in such circumstances, the illegitimate child would follow the mother's citizenship (see paras 6–8, 38–39, 43–44 & 47). F G H I

[28] Peguam kedua-dua pemohon turut merujuk mahkamah ini kepada keputusan terkini Mahkamah Persekutuan di dalam kes *CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71 dan

menghujahkan bahawa ia mengikat mahkamah ini serta mengatasi kes *CTEB*. Bahagian yang relevan penghakiman tersebut adalah seperti berikut:

> [43] Dato' Dr Cyrus Das referred us to the dissenting judgment of this court in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236 ('CTEB') *where it was stated that Part III which contains enabling provisions is meant to aid or assist in the interpretation of Parts I and II, and not to qualify or conditionalise the application of Parts 1 and II to Part III*.
>
> The dissenting judgment had commented on section 19B of Part III, as follows:
>
> > [65] ...
> >
> > [66] All the above sections, namely ss 17, 19, 19A and 19B exist as *supplementary or filler sections — so to speak — to supplement or to close any gaps or to resolve technicalities that may arise when the person's parents' identity is in issue or even if their own place of birth is in issue so long as that is a relevant question for the purposes of Part I or Part II respectively*. (Emphasis added.)
>
> [44] The principles of jus soli and jus sanguinis as well as the principles on how the FC was drafted to enable citizenship as broadly as possible while weeding out statelessness have been discussed in great length by the minority of this court in *CTEB*. *We adopt the reasoning there as part of this judgment being the only other decision of the Federal Court apart from this one, to our knowledge, to have touched on this issue most recently*.
>
> [45] ...
>
> [46] Citizenship no doubt is governed by Part III of the FC, but it is also a concept so inextricably linked to the *right to life and personal liberty contained in art 5(1). As such, any provisions on it must be construed as widely as possible*.
>
> [49] We believe that the answer to the question has been. discussed an innumerable amount of times with the most recent being *CTEB*. The starting point is the *understanding that fundamental rights and provisions must be construed as broadly as possible*. Next, provisions which limit those rights must be construed as narrowly as possible. Finally, judicial precedent must play a lesser part when construing constitutional provisions. One cannot afford to be pedantic or cling helplessly to tabulated legalism.
>
> [50] When construing a word or words in the FC protective of or guaranteeing a fundamental right, the court should give *their widest possible meaning without changing or warping the 'base' meaning*. And when construing interrelated provisions, the court should *read them as a whole having regard to the purpose and intent of those provisions and harmonise their collective meaning rather than put them at odds with another*.
>
> [72] In this regard and with respect, we are minded to observe *that citizenship by operation of law is a right — a fundamental and constitutional right. It leaves absolutely no room for the exercise of subjective notions or presuppositions on what citizenship is*. The words citizenship 'by operation of law' could not be any clearer, and *there is no room whatsoever for discretion*. The FC reigns supreme at all times and the respondent and all related bodies are bound to comply with its dictates.

[29] Mahkamah walau bagaimanapun berpandangan bahawa fakta kes di *CCH* adalah berbeza dengan fakta kes ini kerana di dalam *CCH* ia melibatkan seorang bayi yang mana ibu bapanya tidak dapat dikenalpasti. Bayi tersebut yang telah dilahirkan di Hospital Universiti Kebangsaan Malaysia dan diambil sebagai anak angkat.

[30] Sebaliknya di dalam kes di hadapan mahkamah kedua-dua pemohon dilahirkan di luar ikatan sah perkahwinan yang menjadikan mereka tidak tercakup sebagai anak yang sah taraf. Ia dengan kata yang lain adalah berhubungan dengan peruntukan yang berbeza dengan kes *CCH*.

[31] Oleh itu prinsip di dalam kes *CCH* pada pandangan mahkamah ini adalah tidak sepatutnya diterima pakai namun sebaliknya kes *CTEB* adalah yang lebih relevan dan mengikat mahkamah ini.

[32] Pendekatan yang sama telah diambil oleh Mahkamah Rayuan di dalam kes *Mahisha Sulaiha Abdul Majeed v Ketua Pengarah Pendaftaran & Ors and another appeal* [2022] 5 MLJ 194; [2022] 8 CLJ 697 di mana hakim Kamaluddin Md Said HMR menyatakan:

> [22] The facts in *CCH*'s case are related to abandoned or exposed children. The Federal Court held that the broadest possible interpretation of the word 'found exposed' is to accord it a meaning to include a child abandoned at the place of birth by the birth mother whose identity is unknown. However, the facts and issues in the present case are different and therefore can be distinguished. The issue in *CCH*'s case in my view, is not whether the word 'father' under art 14(1)(b), Part II s 1(b) Second Schedule of the Federal Constitution ought to be construed as mother or include mother. The interpretation is not related to s 1(b) Second Schedule of the Federal Constitution but to s 1(a) of Part II read together with s 19B of Part III. More importantly, the mothers are legally married to foreign spouses and their children were born in wedlock abroad. As alluded to earlier, these children had all acquired citizenship following their non-citizen father's nationality or without a citizenship or stateless.
>
> [23] I find the decision in *CTEB*'s case is in direct reference to citizenship by operation of law provisions in Part II of the Federal Constitution where the majority held that in defining the word 'parents' in s 1(a) giving a plain and ordinary meaning must refer to lawful parents. In the same light, the word 'father' in s 1(b) must also refer to a father in a valid marriage. In addressing the issue, the majority decision clearly states that the citizenship by operation of law in the Federal Constitution under art 14(1)(b) read together with the Second Schedule, in s 1(b) and (c) of Part II of the Federal Constitution must be read as a whole and to be given a straightforward plain meaning. It means, s 1(b) and (c) of Part II of the Federal Constitution is not discriminatory provision and cl 2 of art 8 of the Federal Constitution cannot be read into s 1(b) and (c) of Part II of the Federal Constitution.

[33] Di atas pertimbangan ini, mahkamah ini merumuskan bahawa kedua-dua pemohon telah gagal untuk membuktikan bahawa kedua mereka telah mematuhi kehendak sepertimana yang ditetapkan di bawah perkara 14(1)(b) PP yang dibaca bersama-sama s 1(a), Bahagian II, Jadual Kedua PP.

[34] Ini membawa kepada kepada hujahan peguam pemohon berkaitan s 1(e), Bahagian II, Jadual Kedua di mana peguam menghujahkan bahawa seksyen ini beroperasi secara berasingan dari perenggan (a)–(d). Ia dengan kata yang lain berdiri secara sendiri dan melayakkan kedua-dua pemohon untuk mendapatkan kewarganegaraan.

[35] Di dalam kes ini, mahkamah bersetuju ke atas hujahan peguam persekutuan bahawa kedua-dua pemohon secara amnya layak untuk mendapat kewarganegaraan negara Singapura. Tiada apa-apa usaha yang ditunjukkan oleh kedua-dua mereka untuk membuktikan apa-apa usaha yang telah diambil untuk memperolehi kewarganegaraan Singapura.

[36] Apabila mereka layak untuk diiktiraf sebagai warganegara Singapura, maka pada pandangan mahkamah s 1(e) Bahagian II Jadual Kedua PP ini adalah tidak terpakai ke atas mereka. Ini sejajar dengan apa yang dinyatakan oleh Mahkamah Rayuan di dalam kes *Azimah bt Hamzah v Ketua Pengarah Jabatan Pendaftaran Negara & Ors* [2023] 3 MLJ 227; [2023] 3 CLJ 475 seperti berikut:

> [22] Thus, if the bloodline or parentage can be ascertained, as in this case, then the appellant's nationality at her time of birth can be determined by reference to the nationality of her parents. Her lineage and the citizenship laws governing her parents' nationality would be relevant to determine whether or not the appellant fulfils the requirement that she 'was not born a citizen of any country'. In that event, the appellant though born on Malaysian soil, would be a person born a citizen of another country, ie, Cambodia, by virtue of the principle of *jus sanguinis*. Hence, she would not be stateless at the time of her birth.
>
> [23] In this regard, we concur with the High Court that the appellant has to prove that she was stateless at the time of her birth to avail of her rights under s 1(e) of Part II of the Second Schedule of the Federal Constitution. The facts show that her parents were refugees from Cambodia. Thus, there was evidence of the parents' country of origin. Though the appellant's birth certificate issued by the first respondent did not state the nationality of her parents, that does not mean that her parents were stateless. The burden to proof that fact rests upon the appellant.

[37] Sehubungan itu, mahkamah turut berpandangan bahawa adalah menjadi kewajipan kepada kedua-dua pemohon untuk menunjukkan kepada mahkamah mengapa mereka tidak berhak mendapat kerakyatan Singapura. Perkara ini telah gagal dilakukan oleh kedua-dua pemohon. Oleh yang

demikian, kedua-dua pemohon tidak boleh dikatakan sebagai orang tanpa kerakyatan bagi tujuan kewarganegaraan melalui kuat kuasa undang-undang di bawah s 1(e) Bahagian II Jadual Kedua PP.

[38] Oleh itu kedua-dua pemohon pada pandangan mahkamah turut tidak berjaya membuktikan bahawa s 1(e), Bahagian II, Jadual Kedua tersebut adalah terpakai ke atas mereka.

KESIMPULAN

[39] Berdasarkan kepada analisis dan pendapat-pendapat di atas, mahkamah memutuskan bahawa kedua-dua pemohon telah gagal untuk membuktikan bahawa mereka adalah layak untuk diberikan status warganegara melalui kuat kuasa undang-undang di bawah perkara 14(1) PP. Mahkamah berempati dengan dilema yang dihadapi oleh kedua-dua pemohon, namun, ia masih terbuka kepada mereka untuk memohon kewarganegaraan secara naturalisasi, jika keperluan undang-undang dipenuhi dengan kepuasan pihak berkuasa.

[40] Sehubungan dengan itu, permohonan semakan kehakiman sepertimana di K1 adalah ditolak tanpa sebarang perintah berkaitan kos.

Permohonan ditolak.

Dilaporkan oleh Nabilah Syahida Abdullah Salleh